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Issued May 21, 1910.

U. S. DEPARTMENT OF AGRICULTURE,
BUREAU OF BIOLOGICAL SURVEY—Circular No. 73.
C. HART MERRIAM, Chief of Bureau.

PROGRESS OF GAME PROTECTION IN 1909.

BY

T. S. PALMER, HENRY OLDYS, AND C. E. BREWSTER,
Assistants, Biological Survey.

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INTRODUCTION.

The year 1909 was marked by a general awakening in the movement for the increase of game, both in experiments in propagation and in the establishment of game refuges and private preserves. Several States made provision for the establishment of state preserves or game farms, and Minnesota and Ontario set aside adjoining tracts comprising altogether more than 2,000,000 acres. The demand for game birds for restocking, as in former years, was much larger than the supply, and imported pheasants and European partridges seemed to be the only upland species which could be obtained in sufficient numbers to restock depleted covers. In general, game wintered well, except that the elk of Wyoming and Idaho suffered for food during the cold weather and it became necessary in Wyoming for the State to provide hay in some localities. The hunting season as a whole was fairly successful, but weather conditions proved unfavorable in certain sections, particularly in the case of deer hunting in Michigan and

^a For the last seven years the Department has issued a brief annual review of the more important matters in game protection. These reviews have appeared in the Year-books as follows: 1902, pp. 733-734; 1903, pp. 566-569; 1904, pp. 606-610; 1905, pp. 611-617; 1906, pp. 533-540; 1907, pp. 590-597; 1908, pp. 580-590. The object of the series is to place on record a condensed statement of the more important events in each year, to indicate progress in various lines, and show what has been accomplished in protecting wild life, introducing new species, or increasing game in public and private preserves; in short, to present a condensed review of game protection in the United States.

Wisconsin and duck hunting on the Pacific coast. In most parts of the country, duck shooting was considerably above the average. The hunting season was marred, as in 1908, by a large number of hunting accidents, the fatalities reported being nearly 50 per cent more than those reported in any previous year.

In the administration of the game laws important changes were made in several States. In New York, New Jersey, and Wisconsin civil-service methods were applied to the warden service. In Kansas and Oklahoma the game departments were handicapped by lack of funds through defects in the appropriation bills, and in North Carolina the responsibility of enforcement was divided between the boards of supervisors in some counties and the Audubon Society in others. In legislation the record of the year was very large, owing to sessions of the legislatures in all but half a dozen States and the wide interest manifested in game protection. The number of game cases appealed to the higher courts was smaller than usual, and few novel or important points were decided, but it is interesting to note that several game laws were declared unconstitutional.

CONDITION OF GAME.

BIG GAME.

Changes in the laws affecting big game caused material differences in the hunting of deer and antelope in some States. In New Jersey and Oklahoma the deer season was opened for the first time in ten years, and in Vermont the killing of does was permitted for the first time in thirty-three years. The antelope was practically removed from the game list through the closing of the season in the States where these animals are still found. This fact is of special interest, as the antelope is the third kind of big game which can no longer be hunted in the United States. The caribou, except in Alaska, was removed from the list in 1905 by the closing of the season in Minnesota, and the last wild buffalo outside the Yellowstone National Park were killed in 1897.

Deer.—Although the total number of deer killed in the States where statistics are available is slightly less than last year, the variations are not uniform, and some States even show a material increase. In several cases the increases or decreases are directly traceable to legislation. In California the season was extended one month through an error in the copy of the bill signed by the governor. In New Jersey the season, which had been closed throughout the year, was opened four days in November. In Oklahoma deer hunting was permitted for the first time since 1899. In Vermont permission to kill does resulted in nearly twice as many deer being killed. In Colorado extension of protection to does probably lessened the total kill,

although statistics are not available. In Michigan and Wisconsin there was a decided decrease, due in part, perhaps, to unfavorable weather at the opening of the season, but chiefly to other causes. In Michigan the decrease of 27 per cent, notwithstanding a greater issue of deer-hunting licenses, was probably due to depredations of wolves. In Wisconsin the falling off was largely because of the reduction of the limit from two to one. The 12 States which had no deer hunting in 1909 were Massachusetts, Rhode Island, Connecticut, Delaware, Tennessee, Kentucky, Ohio, Indiana, Illinois, Iowa, Nebraska, and Kansas.

Returns from the States east of the Mississippi show a total of about 57,500 deer killed, as compared with nearly 60,000 in 1908. In the following table, showing the returns for each year, the totals may be accepted as fairly accurate, the lack of statistics in three or four States being offset by high estimates in one or two others, so that if the figures were complete the totals would probably not be materially changed:

State.	1908.	1909.	State.	1908.	1909.
Maine.....	15,000	15,879	Virginia.....	207	219
New Hampshire.....	(a)	(a)	North Carolina.....	(a)	(a)
Vermont.....	2,700	4,736	South Carolina.....	1,000	(a)
New York.....	6,000	9,000	Georgia.....	(a)	367
New Jersey.....		(a)	Florida.....	2,209	2,021
Pennsylvania.....	500	500	Alabama.....	152	148
Michigan.....	9,076	6,641	Mississippi.....	411	458
Wisconsin.....	11,000	6,000	Louisiana.....	5,500	5,470
Minnesota.....	6,000	6,000			
West Virginia.....	107	51	Total.....	59,878	57,494
Maryland.....	16	13			

a No statistics available.

Moose.—From the two States, Maine and Minnesota, where hunting is still permitted, reports show no decrease in the abundance of moose. The number of moose shipped over the railroads of Maine is reported as 184, as compared with 175 in 1908. Statistics of the number shipped in Minnesota are not available.

Antelope.—The fact of chief interest was the practical elimination of antelope from the game list in the United States, due to close seasons established for several years in Montana, Nevada, Oregon, and Wyoming, so that in all parts of the United States where these animals now occur they are protected throughout the year. During the winter, food was supplied at points along the Burlington Railroad to several hundred antelope from western Nebraska and northeastern Colorado, under the direction of the game commissioner of Colorado.

Sheep.—The only States which permit hunting of mountain sheep are South Dakota, Montana, Wyoming, Idaho, and Washington. In the Southwest mountain sheep are now protected throughout the year. In Colorado they seem to be steadily increasing.

GAME BIRDS.

Taken as a whole, the season for game birds has been very favorable.

Quail.—Quail have been unusually abundant in their normal range; and along its northern limit, in States like Pennsylvania, Connecticut, Massachusetts, and Wisconsin, they showed much increase over last year. The breeding season was favorable and in many localities two broods to the pair were raised. At the opening of the shooting season, however, some scarcity was noted in various sections in New York, Illinois, and Virginia, and even in Oklahoma and Texas, where the birds had previously been reported as showing abnormal abundance. Toward the end of the year heavy snows and cold weather proved destructive and it is probable that next season will witness unusual scarcity of quail in the region of heavy snowfall.

Ruffed grouse.—Ruffed grouse are apparently increasing slowly, although some sections report a scarcity greater than should normally be expected.

Wild turkeys.—Wild turkeys are reported as plentiful, compared to the present normal number, at certain points in Virginia, West Virginia, North Carolina, Florida, Arkansas, Missouri, and Oklahoma.

Prairie chickens.—The condition of prairie chickens was not very satisfactory. East of the Mississippi the season was closed in Michigan, Indiana, and Illinois, and west of the Mississippi in Missouri and South Dakota. Reports from Illinois indicate that in spite of the protection since 1903 the birds have not materially increased during the last two or three years. In many sections of Iowa they are decreasing and in some parts of Kansas they have disappeared from localities where a few years ago they were abundant. Reports from Nebraska and from the Northern States are more encouraging and indicate that the season was a favorable one.

Imported pheasants.—The Chinese pheasant is apparently decreasing in Oregon, and some sportsmen are advocating abolition of the open season for two or three years to afford a chance for recovery. The English ringnecks liberated in Illinois seem to be doing fairly well and those formerly liberated in certain sections of New York and Ohio show an increase.

Hungarian partridges.—The Hungarian partridge, on which attention of sportsmen has so largely centered during the past two or three years, seems to have done better in southern British Columbia than in any other region in which it has been liberated. Near the border of Washington it is reported to be almost, if not quite, as abundant as the Chinese pheasant. The introduction of the bird into Indiana and West Virginia thus far shows successful results; in Connecticut

and New Jersey results are uncertain at present; and in Illinois the experiment appears to have been rather unproductive.

Woodcock.—Woodcock were reported as scarce in Massachusetts, about holding their own in Connecticut, more numerous than for several years in New Jersey, and abundant in Pennsylvania and Illinois. In New Jersey the cutting off of the July shooting has undoubtedly had a good effect, and with suitable legislation throughout its range the woodcock should maintain itself for many years.

Shore birds.—Shore birds in general seem to show about the normal abundance, though some species of plover are reported as decreasing, and rail were scarce in northern New Jersey.

Ducks.—Ducks are reported as plentiful in all the large ducking centers. The season seems to have been favorable almost everywhere and securing the day's bag limit has been common and easy. Prohibition of spring shooting in North Dakota caused a large increase in the number of ducks nesting in that State. A satisfactory increase in the number of canvasbacks was observed by those hunting on the Susquehanna Flats in Maryland during the fall. At some points, however, while ducks were abundant, shooting was not good. This was particularly noticeable on the California coast, from which complaints have come that the ducks flew high and that many of them migrated by inland routes. The season was rather poor at the outset on the Illinois River, but later the flight was very satisfactory. Both in Wisconsin and Illinois the season as a whole was unusually favorable.

NATIONAL PARKS, GAME REFUGES, AND BIRD RESERVATIONS.

The list of reservations under federal jurisdiction, utilized as refuges and breeding grounds for game, was increased during the year by the addition of the National Bison Range in Montana, the Mount Olympus National Monument in Washington, the Fire Island Moose Preserve in Alaska, and 26 bird reservations distributed in 14 States and Territories.

Yellowstone National Park.—The report of the superintendent indicates that the big game in the Yellowstone National Park is doing well. The antelope which feed in the alfalfa field near the entrance at Gardiner are confined by a fence extending for several miles along the northern boundary. During the winter special measures were taken to prevent them from straying out of the park and down the valley. About 500 mule deer and 60 white-tailed deer were fed during the winter; in March some of the deer suffered from what was supposed to be pneumonia, but despite losses a large increase is reported. The number of elk in the park is now estimated at between 30,000 and 40,000. A number of moose were seen on Bechler River

in the southwestern and also on the upper Yellowstone in the southeastern part of the park. Recent investigations indicate that moose are more abundant along the upper Yellowstone than was formerly supposed, but the total number is unknown. About 70 mountain sheep were fed during the winter. The wild buffalo were reported from several localities. Eleven were seen on Cache Creek on May 19, and 9 near Pelican Creek in April; buffalo signs were also observed in the southwestern part of the park in July. The fenced herd suffered the loss of one cow, but, with the increase of 22 calves and the addition of one wild calf which was captured, now numbers 95 animals, or nearly five times as many as were originally placed in the park in 1902. Bears do not seem to be increasing in numbers in spite of the protection accorded, while coyotes are increasing notwithstanding the killing of about 60 during the year.

Sequoia National Park.—The acting superintendent of the Sequoia National Park reports game more plentiful this season than usual. Many deer were seen about Camp Sequoia and Camp Sierra. The dwarf elk placed in the park a few years ago are so seldom seen that it is difficult to determine whether they have increased or not. Bears were numerous and at times became troublesome by entering provision receptacles and frightening visitors or startling horses and mules. Quail and grouse are said to have been more numerous than usual. Thirty-four wild turkeys were liberated in November by the California Fish and Game Commission.

Yosemite National Park.—Deer are reported as more numerous than usual in the Yosemite National Park, but they drift out of the park when the snowfall is heavy and few return. A few bears were seen during the season. Forty-eight wild turkeys were liberated near Wawona in October.

Mount Rainier National Park.—The acting superintendent of the Mount Rainier National Park reports deer fairly numerous, particularly in the watersheds of the Puyallup, Mowich, and Carbon rivers. Several bands of mountain goats range in the park, but since the construction of the government road they have been seldom seen about Paradise Valley; a large number, however, have been seen near the Cowlitz and Puyallup glaciers, at the head of Rainier Fork, and about the Sluiskin Range. Bears are common and pumas are occasionally seen. Four pumas were killed in the immediate vicinity of the park during the winter of 1908-9.

Grand Canyon Game Refuge.—The boundaries of the Grand Canyon Game Refuge were again changed by proclamation of June 3, 1909, and the area of the reservation was reduced to 1,492,928 acres. The present refuge is now almost entirely on the north side of the canyon, and the only big game consists of deer and a few mountain sheep.

Mount Olympus National Monument.—By executive order of March 2, 1909, a reservation comprising the higher summits of the Olympic Mountains in Washington was set aside under the National Monuments Act. The reservation, designated as the Mount Olympus National Monument, comprises 610,560 acres and was created in part to insure the perpetuation of the breeding grounds of the Roosevelt elk. This species has been given absolute protection by the state law for several years, and, with the removal of all danger of encroachment on its summer home, its future is menaced only by attacks of natural enemies and poachers.

Wichita Game Preserve.—The herd of buffalo in the Wichita Game Preserve is doing well. In 1908 one of the cows was lost through Texas fever, but the disease was promptly stamped out, and as the animals are becoming acclimated less danger from this source is feared in future. Since the herd was established, 2 of the animals have died and 4 calves have been born, so that at the close of the year the herd numbered 17, an increase of 2 over the original number.

National Bison Range.—The National Bison Range was made ready for occupancy in the early autumn, and on October 17 a herd of 37 buffalo, generously contributed by the American Bison Society, was placed in the park. These buffalo include 13 bulls and 24 cows, all but one of which were obtained from the Conrad estate near Kalispell. These animals had formerly been part of the Allard herd. The new herd is about twice as large as that placed in the Yellowstone Park in 1902, and nearly three times as large as that placed in the Wichita Game Preserve in Oklahoma in 1907. It is in charge of a special warden and has a range of about 20,000 acres, admirably adapted to the purpose. All indications point to this as the most successful of the experiments thus far made in establishing herds of buffalo under government auspices.

Bird reservations.—Twenty-six bird reservations were created by executive order during the year, making a total of 51. Of the new reservations 6 are located in Alaska, 1 in Arizona, 2 in California, 1 in Hawaii, 2 in Idaho, 1 in Montana, 2 in New Mexico, 1 in Oregon, 1 in Porto Rico, 1 in South Dakota, 1 in Utah, 5 in Washington, and 2 in Wyoming. Two reservations in Florida were enlarged during the year—the Pelican Island Reservation on January 26 and the Mosquito Inlet Reservation on April 2. On most of the reservations the birds bred successfully, but on the Breton Island Reservation, Louisiana, and the Olympiades reservations in Washington they suffered from unfavorable weather, and comparatively few young were raised. The season was unusually successful on the Pelican Island and Mosquito Inlet reservations, Florida; the Stump and Chase Lake reservations, North Dakota; Klamath and Malheur Lake reservations,

Oregon; and the Deer Flat Reservation, Idaho. Reports of poaching on the Hawaiian Reservation were received late in the year, and through the cooperation of the Secretary of the Treasury arrangements were made to dispatch the revenue cutter *Thetis* to investigate the matter.

STATE GAME PRESERVES.

Notable progress was made in the establishment of state game refuges during the year. In California one was created in the Pinnacles National Forest in San Benito County. Idaho established one on the Payette River, besides providing for a small state park, known as the Heyburn Park, on the Cœur d'Alene Indian Reservation. Massachusetts made game refuges of all its state parks. Minnesota, under a similar law, passed in the spring of 1909, established four refuges—the Superior State Game Preserve, of 1,420,000 acres; the Cass Lake National Forest, of 200,000 acres; the Burntside State Forest, of 20,000 acres; and the Pillsbury State Forest, in Cass County, of 1,000 acres. These, with the Itasca State Park, which contains 31,120 acres, constitute a total area of 1,672,120 acres devoted to game preservation in Minnesota. Wyoming established a game preserve in the Big Horn Mountains, the second large preserve set aside in the State; and California and New York made provision for state game farms for the propagation of pheasants and other game birds, the California farm being located at Haywards and the New York farm at Sherburne.

PRIVATE GAME PRESERVES.

The opposition to ducking preserves in certain quarters, mentioned in last year's report, has continued unabated. Antagonism is much less keen as regards upland preserves, where game is propagated and overflows to the surrounding territory, than is excited by ducking preserves, whose owners frequently shut out the public from the most desirable grounds, and in addition plant wild rice and other duck food to attract more ducks than normally frequent the grounds. The chief scenes of contention have been, as last year, the Illinois River; Big Lake, in Mississippi County, Ark.; and Newport Bay, in southern California. Despite hostility, ducking preserves continue to increase. Among the number recently established may be mentioned those in California, Idaho, and Virginia, the first, comprising a tract of 4,000 acres, abounding in ducks and quail and a noted resort for brant, was secured in Marin County, Calif.; another of 700 acres at Payette, Idaho, affording fine duck and quail shooting, was acquired for the purpose of stocking it also with ringneck pheasants and California quail; and an island in Princess Anne County, Va., was bought by a New York ducking club. Several large tracts were converted into

upland preserves during the year, prominent among which was one of 50 square miles near Sapulpa, Okla.; one of 6,000 acres in Rowan and Iredell counties, N. C.; and 2,000 acres in Colorado, near the New Mexico line, bought by a syndicate of well-known New York financiers. A game association of Schenectady, N. Y., obtained control of 54 acres at Dansville, N. Y., on which to establish a game farm. It is interesting to note that a shooting club of Wisconsin has leased the exclusive hunting privileges of a large tract of land in that State.

A movement for general propagation of game birds, to increase the number of private preserves, and to reduce restrictions on the marketing of game, popularly known as the "more game" movement, has gained ground during the year, and promises to result in a greatly increased interest in the raising of game.

IMPORTATION OF FOREIGN BIRDS.

Nearly half a million (469,090) birds were imported into the United States during the year, an increase of 22 per cent over the importations of 1908. Canaries constituted by far the largest part of this number, 371,910 being brought in. Of the remaining hundred thousand birds more than half (59,669) were miscellaneous nongame birds and 37,511 were game birds. The greatest increase over the previous year's importations was in game birds, which gained 100 per cent, owing to the large number of European partridges, of which 29,452 were imported, as against about 10,000 in 1908. These were mainly Hungarian birds, and were distributed chiefly to the state game officials of California, Connecticut, Illinois, New Jersey, and New York. Two hundred and sixty-five consignments of pheasants, numbering 4,707 birds, were brought in, principally at New York and ports of entry along the Canadian border, an increase of 46 per cent over last year's importations, but 259 birds less than in 1907. Of the 1909 consignments, 53, numbering 3,201 birds, were species usually imported for stocking game covers; 208, numbering 1,428 birds, were aviary species; and 4, covering 74 birds, were unspecified. Twenty-nine different species were represented in the year's importations, including cheer pheasants (seldom imported into the United States, though used in England as a cross with the common pheasant in game covers), two Anderson's kaleeges, and four white-crested kaleeges. Kaleeges are aviary species. Anderson's has been imported only once previously, and the white-breasted has apparently never before been brought in. Waterfowl to the number of 1,924 were imported, chiefly for aviaries and zoological parks. They comprised 1,344 ducks, 315 geese, and 265 swans. Miscellaneous game birds numbered 524. Notable among these were 4 ocellated turkeys, 23 tinamous, and a consignment of 10 each of capercailzie and black game for a Massachusetts preserve.

NONGAME BIRDS.

The protection of nongame birds made notable progress during the year. Favorable legislation was enacted in a number of States, including the adoption of the "model law" by North Dakota and Oklahoma, and the strengthening of the nongame bird law and the passage of a bird-day law in California; and protection was extended by Idaho, Montana, and Nebraska to a number of species theretofore unprotected. On the other hand, protection was removed from certain beneficial birds by Illinois, New Mexico, Oklahoma, Pennsylvania, Utah, and West Virginia. Bills in many States for bounties on birds and mammals, which would have proved a large source of economic loss, were defeated through the exertions of bird protectionists. A growing sentiment on the Pacific coast has manifested itself in an active enforcement of the law prohibiting sale or possession of bird plumage; the millinery stores of Oregon ceased selling plumage of native birds last summer, while those of Washington agreed to abandon its sale after January 1, 1910. A similar campaign was started in California, with promise of the attainment of the same results. A lot of Japanese bird skins, brought to Seattle to be sold for millinery purposes, was seized by the county game warden; and a thousand dollars' worth of aigrettes, from Brazil, which were being smuggled into the United States at New York, were seized and held by the customs authorities.

Much educational work has been done throughout the United States, especially by the Audubon societies, by means of lectures, traveling libraries of bird books, leaflets, and work among school children.

ADMINISTRATION AND ENFORCEMENT OF GAME LAWS.

The year showed a marked strengthening of the warden service in a number of States, notably Oklahoma, Missouri, and South Dakota, where the enactment of general hunting license laws with the resultant funds to be used only for game protection has made possible the installment of efficient departments organized and maintained along modern lines. Changes in the personnel of game commissions occurred in Arizona, Colorado, Connecticut, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, Utah, West Virginia, and Wisconsin. Warden service was established in Alaska and eleven wardens were appointed by the governor. North Dakota adopted the plan of intrusting the enforcement of its laws to a board of control composed of five members serving without salary, and South Carolina endeavored, without success, to transfer the work of game protection from the Audubon Society to a state game commissioner. In Oklahoma the work of

The desirability of applying the merit system to the warden service attracted attention in several States during the year. In Minnesota the executive agent of the fish and game commission states:

The best service possible [on the part of the wardens] will never be obtained until it is understood that tenure of their office will depend solely upon their making good as wardens and will not be jeopardized by changing political conditions. The spoils system when applied to this service is pernicious to a degree and should not be tolerated by the people. (Report for 1909, p. 4.)

In New Jersey the first steps were taken under the new civil-service law and an examination for game protectors was held in the autumn. In New York a slight change was incorporated in the game law which rendered the application of the civil-service law more effective. All appointments of the protectors are made by competitive examination and New York, with its 85 regular game protectors, now has the largest salaried force of any State in the Union and one of the best organized forces in the country. In Wisconsin, after a slight change was made in the application of the civil-service law to warden work, the force was completely reorganized. Competitive examinations for deputy wardens were held by the civil-service commission throughout the State in October and candidates were required to pass both written and oral examinations. One hundred and seventy-nine candidates were examined orally, and of those who passed successfully a list of eligibles was made up from which the State warden made his selection, after personal conference with the applicants. The Wisconsin experiment in holding comprehensive examinations is notable as the first of its kind and marks a decided advance in the movement to obtain the men best qualified for the service without regard to personal or political considerations.

Particular attention has been paid in a number of States to a more vigorous enforcement of the laws regulating the export and sale of game, and a decided falling off of the amount reaching the markets of the larger cities has resulted. Grouse, both ruffed and pinnated, were offered for sale in but few game markets and in greatly reduced numbers. In the cities of Kansas City and St. Louis a rigid enforcement of the new Missouri game law almost entirely suppressed the local traffic in game and prevented the use of these cities as transfer or distributing points for game shipments. Notwithstanding an unusually satisfactory season for waterfowl shooting throughout the United States, the game markets generally showed no increase in the number of ducks offered for sale, while in New York, Philadelphia, Chicago, Baltimore, and Cincinnati waterfowl were received in reduced numbers.

During the year a number of unusually large fines were imposed and collected. The proprietor of a prominent hotel in Cincinnati was fined \$1,000 for having in possession 900 quail during the close

season, and a like sum was paid by a representative of a Pittsburg firm at Titusville, Pa., for unlawfully dealing in game birds. A Mount Vernon, Ill., court imposed a fine of \$625 and costs for a violation of the state law regulating possession and sale of game, and two men at Trout Run, Pa., were fined \$325 for offering venison and deer hides for sale. At Bluford and Nashville, Ill., fines of \$200 and \$175, respectively, were collected, while fines of \$100 were imposed by courts in Delaware, Illinois, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, Wisconsin, and Wyoming for various violations of the game laws.

CONVENTIONS.

In recent years the experiment has been tried in a few States of holding annual conventions of the warden force of the State for the purpose of considering questions arising in the line of their duties, receiving verbal instructions, and reporting conditions in their respective districts. Such gatherings have been found to be of much value to the service and the custom has spread. In 1909 conventions of this character were held in Louisiana (for the first time), Maine, Michigan, Montana, New York, and Wisconsin.

In addition to these warden conventions several state game associations held annual meetings, mainly for the purpose of consolidating support for certain popular measures to be presented to the legislatures. The Iowa Game and Fish Association held its first meeting in January. The Michigan association met in the same month and appointed a committee to look after game bills being considered by the legislature then in session. The Kentucky Fish and Game Protective Association was organized at Louisville in February. The California Fish and Game Protective Association held its annual meeting at Lake Tahoe September 13. The Maryland State Fish and Game Protective Association met at Baltimore October 22 and appointed a committee to prepare a bill providing for a general resident hunting license and other desirable features. The New York State Fish, Game, and Forest League, composed of 80 local clubs with a total membership of several thousand sportsmen, held its forty-fifth annual meeting at Syracuse on December 9 and 10. The state associations of Arkansas, Georgia, Oregon, Virginia, and West Virginia also held interesting meetings.

LEGISLATION.

The year was notable for the volume and importance of game legislation enacted. Amendments to the game laws were adopted in 38 States and 6 Canadian provinces; entirely new game laws were enacted by Idaho, Missouri, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, West Virginia, and

Wyoming; and California, Maryland, and New Jersey provided commissions to codify the game laws.

Increasing interest in game preserves was responsible for legislation making state game refuges of all state parks in Massachusetts and of state parks and forest reserve lands and national forests in Minnesota. Tennessee settled the tragic dispute over Reelfoot Lake by setting the lake aside as a public fishing and hunting preserve. New game refuges were established by Wyoming, Idaho, and California. Colorado and Wyoming passed laws providing for the feeding of big game during severe winter weather, and Pennsylvania adopted a novel provision requiring persons intending to establish deer parks to drive off the wild deer before inclosing their lands. An important measure was passed by Michigan, which provided for the leasing of the state lands frequented by waterfowl on the St. Clair flats. A board composed of three state officials was created and was authorized to fix rentals for the use of the lands for five years.

Complete protection was given antelope in Montana, Nevada, Oregon, and Wyoming; elk and sheep in Oregon; female deer in Colorado, Missouri, and Oregon; grouse and prairie chickens in Missouri and South Dakota; doves in Montana; and sage hens in several counties in Utah. The growing interest in the Hungarian partridge was reflected in the passage by a number of States of laws giving protection to this bird.

Some important changes were made in shooting seasons. New Jersey and Oklahoma opened a short season for male deer, and Nevada and Vermont for female deer. Massachusetts and North Dakota prohibited spring shooting of waterfowl, while, on the other hand, the spring shooting season was extended by Idaho, Indiana, Nebraska, Nevada, and Oregon. Close seasons were provided for waterfowl in Oklahoma; black brant in California; geese and brant in Massachusetts; and shore birds in New Mexico and Oregon.

A marked tendency was observable to limit still further the amount of game allowed each hunter, chiefly as regards deer and waterfowl. The bag limits of waterfowl were decreased in California, Colorado, Montana, New Mexico, Oregon, and South Dakota; and Illinois passed a unique law allowing only one-half the regular bag limit to boys under 12.

License laws were an important feature of the legislation of the year. New Hampshire, Vermont, Rhode Island, New Jersey, West Virginia, Iowa, Oklahoma, Texas, New Mexico, and Nevada established the resident license, the number of States indicating the popularity of this means of raising revenue for the enforcement of game laws. Alien licenses were adopted by a dozen or more States. Utah established an alien license of \$100, while Pennsylvania prohibited aliens from even possessing guns, a measure at once carried into the courts.

The warden service was given added importance in 11 States, namely, California, Idaho, Illinois, Missouri, Montana, New York, North Dakota, South Dakota, Vermont, West Virginia, and Wisconsin. Provision was made for warden service in Alaska by congressional action, and four wardens were appointed by the governor.

Export of game was further restricted by the passage of legislation in Iowa, West Virginia, and Wyoming, replacing partial with complete restrictions on the shipment of game from the State. The marketing of game raised in captivity received encouragement by the passage of laws by New York, North Dakota, South Dakota, and Washington, permitting export under suitable restrictions of certain game, chiefly pheasants, reared in confinement.

Three States—Iowa, South Dakota, and West Virginia—extended their restriction of the sale of game so as to prohibit the marketing of any game at any time during the year. Illinois, North Dakota, Massachusetts, and New Hampshire increased the stringency of such restrictions, while North Dakota and Oklahoma lessened it.

The new silencer received attention in Maine, North Dakota, and Washington in the form of measures prohibiting its use. The unusually dry season of 1908, with its resultant fires in some of the Northern States, led to provisions by Maine, Massachusetts, New Hampshire, and Vermont authorizing the governor to suspend the hunting season in time of drought, and by New York authorizing the governor to prohibit hunting, camping, or fishing in the forest-preserve counties.

Congress incorporated in the criminal code, which took effect January 1, 1910, the importation and interstate commerce provisions of the Lacey Act, slightly modified and much strengthened; and in the tariff act of August 5, 1909, an increase of 5 per cent on crude and 10 per cent on dressed feathers imported for millinery purposes.

DECISIONS OF THE COURTS.

The court decisions of 1909 relating to game laws were notable for the diversity of subjects considered. They were, however, fewer than usual, and were mostly of little general interest. In most cases where state game officials were concerned they were sustained by the courts. In five cases the constitutionality of state game laws was considered and in two of these the laws were declared unconstitutional. The more important points brought before the courts during the year were the shipment of game raised in captivity, the constitutionality of the game protection fund, the rights of hunters on navigable waters, respective jurisdictions of the county and the State, and the question of intent in connection with the possession of game.

Probably the most important case of the year was that of *Dieterich v. Fargo* (87 N. E., 518), which was settled by the court of appeals

of New York on appeal from the appellate division of the supreme court. The case arose through the refusal of the American Express Company to transport deer from the private park of Dieterich at Millbrook, Dutchess County, N. Y., to the city of New York. Dieterich applied for a temporary injunction on the ground that the law prohibiting transportation of deer did not apply to domesticated deer. The case was decided against him by the supreme court in New York County at special term December, 1906, and this decision was sustained May 10, 1907, by the appellate division of the supreme court. The court of appeals, however, reversed these holdings and declared that while the close season laws apply to domesticated as well as wild game, transportation provisions apply only to wild game.

An interesting case (*State v. Dudley*, 49 S., 12) arose in Louisiana. The legislature passed an act authorizing parishes to regulate the taking and shipment of game, and on the following day enacted a general law containing certain provisions covering practically the same features. Under the authority of the first act the parish of Calcasieu limited the export of ducks from the county to 12. The later law placed no limit on the export of ducks from the parish, but prohibited the shipment of more than 25 from the State. Dudley was arrested for shipping 90 ducks out of the parish, was convicted in the lower court, and was fined \$25. On appeal to the supreme court this decision was reversed on the ground that the second law repealed the first and removed the authority of the parish to regulate killing and transportation of game.

The right of the public to use navigable waters in Massachusetts was determined in the cases of *Home for Aged Women v. Commonwealth* (89 N. E., 124) and *Crocker et al. v. Champlin* (89 N. E., 129).

Other cases of interest present diverse questions of interpretation of game laws. In *Salene v. Isherwood et al.* (106 Pac., 18) it was decided in Oregon that under a grant of a right to shoot wild fowl on waters situated on lands described, with the right of passage to and from such waters for the purpose of shooting, the right was included to maintain small boats and temporary structures not interfering with the use of the grantor's adjoining farm and including the erection of blinds, the use of decoys, and the keeping of bird dogs. In *Snow v. State* (105 Pac., 575—Oklahoma) it was held that the intent or purpose in having possession of quail was material in a case arising under the law prohibiting possession. In *Fritz v. State* (115 S. W., 385—Arkansas) the old principle that landowners are amenable to the game laws on their own lands was declared anew. In *Ex parte Blardone* (115 S. W., 838—Texas) the law prohibiting the sale of ducks was declared a proper exercise of the police power under the constitution. In *State v. Barco* (63 S. E., 673—North Carolina) the law of the State

prohibiting the anchoring of float houses more than 300 yards from the mainland was held to be violated by the placing of a float house off Duce Quarter Island, notwithstanding the plea that the island was not a natural division, but resulted from the digging of a ditch by the former owner, which, by the action of wind and tide, had been widened into a channel from 48 to 60 feet across and navigable by small boats between Duce Quarter and the land to which it had been originally attached. Both the superior court of Currituck County and the supreme court of the State held that this artificially created island is no longer part of the mainland. In *State v. Holcomb* (101 Pac., 1072—Kansas) the sufficiency of the title of the game law was declared and the disposition of hunting license fees was determined. In *Acklen v. Thompson* (Tennessee) and also in the case of *State ex rel. Peyton v. Cunningham* (103 Pac., 497—Montana) questions of constitutionality of legislation affecting game officials were determined. In the Tennessee case the act of 1909 was declared unconstitutional. This act contained the provision among others that the commissioner of agriculture should perform the duties of the state commissioner of game, fish, and forestry. The action of the court, therefore, continued the present state commissioner in office. In the Montana case an attempt was made to continue the widow of a game warden, who had lost his life in the performance of duty, on the rolls at the same salary that her husband had received. The action was taken by the legislature by joint resolution, however, and the court held that the constitution of the State provided that no law should be passed except by bill.

Some lower court decisions were of special interest. The California district court of appeals for the third district held that county ordinances are not repealed by the constitutional amendment of 1902 providing for the creation of game districts and the enactment of special fish and game laws by the legislature (*In re Cole*, 10 Cal. App. Dec., 28), thus sustaining a view diametrically opposed to that taken in 1904 by the court of appeals for the second district. In Pennsylvania, in *Commonwealth v. Papsone*, the constitutionality of the law prohibiting unnaturalized citizens from possessing firearms was upheld; and in *Commonwealth v. McComb* the constitutionality of the law prohibiting the use of automatic guns, denied in the court of quarter sessions in 1908, was sustained by the superior court. An appeal to the supreme court in this case was decided in favor of the State soon after the close of the year.

Approved:

JAMES WILSON,

Secretary of Agriculture.

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